Supreme Court U.S.
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OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

A.F., a minor, and
Richard John Florance, Jr., Next Friend,
Plaintiffs-Appellants-Petitioners,

v.

STATE OF TEXAS,
Defendant-Appellee-Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

ORIGINAL PETITION FOR WRIT OF CERTIORARI

AMANDA FLORANCE
RICHARD JOHN FLORANCE, JR,
NEXT FRIEND
1905 VASSAR DRIVE
RICHARDSON, TEXAS [75081]

Questions Presented

Due Process—Equity v. Law

1. Does an appeal (an adequate remedy at law) really exist where there is no trial *de novo* jurisdiction?

STATUTORY CHALLENGES

Due Process, Separation of Powers

2. Does Art. 45.018 violate Due Process or Separation of Powers?

3. Do Arts. 2.05 and 45.019 violate Due Process or Separation of Powers?

4. Do Arts. 44.17, 44.181 and 45.042 violate Due Process or Separation of Powers?

Parties

The state court of appeals judgment sought to be reviewed affirmed the county court, which dismissed for lack of jurisdiction, and the parties to that state appellate proceeding are as follows:

Case No. 05-05-01435-CV

Amanda Florance, a minor ("Florance")
Richard John Florance, Jr., as Next Friend ("RJF")

STATE OF TEXAS
ANTHONY G. BRACATTO, JR.
Assistant Attorney General
Law Enforcement Defense Division

CITY OF PLANO, TEXAS (amicus)
RODNEY D. PATTEN
Assistant City Attorney
CITY OF PLANO

UNITED STATES OF AMERICA ("USOA") (notified)

Hon. ALBERTO R. GONZALES
Attorney General, United States

RICHARD B. ROPER, III
United States Attorney
Northern District of Texas

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Citations to decisions below

__ S.W.3d __ (13 Jun 2006) (per Supreme Court of Texas' web site).

Basis for Jurisdiction

(i) Date Judgment To Be Reviewed Was Entered
13 June 2006

(ii) Rehearing, Extension
Petition for Review (Writ of Error), Supreme Court of Texas, No. 06-0536. Filed: 26 June. Order to respond: 29 June. Waiver of response: 31 July. Submitted: 1 August. Petition denied: 8 **September**. [Mandate: 18 October.] [8 **September** + 90: 7 December 2006]

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
Review by certiorari of decree from highest state court in which a decision may be had, where state statute validity is raised. 28 U.S.C. §§ 1257(a), 2101(c).

(v) Regarding notice of statutory challenge, Rule 29.4(b)
28 U.S.C. § 2403(b) may apply. The initial filing here is served on the Solicitor General. The statutory challenges were raised at trial and on appeal, and service has been made on STATE OF TEXAS and on United States of America at each stage.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

The Conflicting Statutes at Issue

TX Criminal Procedure Code

Art. 2.04. [28] [34] [35] Shall draw complaints

Upon ***complaint*** being made before a district or county attorney that an offense has been committed in his district or county, he shall reduce the ***complaint*** to writing and cause the same to be signed and sworn to by the complainant, and it shall be duly attested by said attorney.

Art. 2.04 (Thomson/West 2005) (emphasis added).

Art. 2.05. [29] [35] [36] When complaint is made

If the offense be a misdemeanor, the attorney shall forthwith prepare ***an information based upon such complaint*** and file the same in the court having jurisdiction; provided, that in counties having no county attorney, ***misdemeanor cases may be tried upon complaint alone***, without an information, provided, however, in counties having one or more criminal district courts an information must be filed in each misdemeanor case. ...

Art. 2.05 (Thomson/West 2005) (emphasis added).

Art. 21.20. [413] [477] [465] "Information"

An "Information" is a written statement ***filed and presented in behalf of the State by the district or county attorney***, charging the defendant with an offense which may by law be so prosecuted.

Art. 21.20 (West 1989) (emphasis added).

Art. 21.21. [414] [478] [466] Requisites of an information [District/County Court]

An ***information*** is sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of the State of Texas";

2. That it appear to have been presented in a court having jurisdiction of the offense set forth;

3. That it appear to have been presented by the proper officer;

4. That it contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him;

5. It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the court where the information is filed;

6. That the time mentioned be some date anterior to the filing of the information, and that the offense does not appear to be barred by limitation;

7. That the offense be set forth in plain and intelligible words;

8. That it conclude, "Against the peace and dignity of the State"; and

9. It must be signed by the district or county attorney, officially.

Art. 21.21 (West 1989) (emphasis added).

Art. 21.22. [415] [479] [467] Information based upon complaint [District/County Court]

No information shall be presented until ***affidavit*** has been made by some credible person charging the defendant with an offense. The ***affidavit*** shall be filed ***with the information.*** It may be sworn to before the district or county attorney who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths.

Art. 21.22 (West 1989) (emphasis added).

Art. 27.01. [504] [568] [557] Indictment or information

The primary **pleading** in a criminal action on the part of the State is the indictment or ***information.***

Art. 27.01 (Thomson/West 2006) (emphasis added).

Art. 44.17. [837] [925] [891] Appeal to county court, how conducted

In all appeals to a county court from justice courts and municipal courts other than municipal courts of record, the trial shall be de novo in the trial in the county court, the same as if the prosecution had been originally commenced in that court. ...

Art. 44.17 (West Supp. 2006).

Art. 44.181. Defect in complaint

(a) A court conducting a trial de novo based on an appeal from a justice or municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the justice or municipal court.

(b) The attorney representing the state may move to amend a defective complaint before the trial de novo begins.

Art. 44.181 (West Supp. 2006).

Art. 45.018. Complaint [Municipal Court]

(a) For purposes of this chapter, a ***complaint*** is a sworn allegation charging the accused with the commission of an offense.

(b) ***A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding*** in the prosecution of the defendant under the ***complaint***. The defendant may waive the right to notice granted by this subsection.

Art. 45.018 (West Supp. 2006) (emphasis added) (if read literally, this dispenses altogether with both filing and serving a competent **pleading**).

Art. 45.019. [883] [973] [938] Requisites Of Complaint [Municipal Court]

(a) *A **complaint** is sufficient, **without regard to its form**,* if it substantially satisfies the following requisites:

(1) it must be in writing;

(2) it must commence "In the name and by the authority of the State of Texas";

(3) it must state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;

(4) it must show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that

the accused has committed an offense against the law of this state;

(5) it must state the date the offense was committed as definitely as the affiant is able to provide;

(6) it must bear the signature or mark of the affiant; and

(7) it must conclude with the words "Against the peace and dignity of the State" and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words "Contrary to the said ordinance".

(b) A complaint filed in justice court must allege that the offense was committed in the county in which the complaint is made.

(c) A complaint filed in municipal court must allege that the offense was committed in the territorial limits of the municipality in which the complaint is made.

(d) A complaint may be sworn to before any officer authorized to administer oaths.

(e) A complaint in municipal court may be sworn to before:

(1) the municipal judge;

(2) the clerk of the court or a deputy clerk;

(3) the city secretary; or

(4) the city attorney or a deputy city attorney.

(f) If the defendant does not object to ***a defect, error, or irregularity of form*** ***or substance*** in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be

made at an earlier time.

Art 45.019 (West Supp. 2006) (emphasis added). *But cf.* Art. 21.21 (attorney signature required).

Art. 45.0215. Plea by Minor and Appearance of Parent

(a) If a defendant is younger than 17 years of age and has not had the disabilities of minority removed, the judge or justice:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; ***and***

(B) ***all other proceedings*** relating to the case.

Art. 45.0215(a) (West Supp. 2006) (emphasis added).

Art. 45.042. [876] Appeal

(a) Appeals from a justice or municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court.

Art. 45.042(a) (West Supp. 2006).

Art. 45.201. [869] Municipal Prosecutions

(a) All prosecutions in a municipal court shall be conducted by the city attorney of the municipality or by a deputy city attorney.

Art. 45.201 (West Supp. 2006).

Citations to additional authority

31 U.S.C. §§ 5101, 5102, 5103 (2000).

Public Law 105-61, § 641, 111 Stat. 1272, 1318 (1997) (amending 31 U.S.C. § 5118(d)(2)).

Economic Growth and Regulatory Paperwork Reduction Act of 1996, P.L. No. 104-208, § 2609, 110 Stat. 3009, 3009-475 (amending 31 U.S.C. 5118(d)(2)).

The Gold Bullion Coin Act of 1985. P.L. No 99-185 (Dec. 17, 1985), 99 Stat. 1177.

Act of October 28, 1977, Pub. L. No. 95-147, § 4(c), 91 Stat. 1227, 1229 (codified as amended at 31 U.S.C. § 5118(d)(2)).

Coinage Act of 1965, Pub. L. No. 89-81, § 211(a), 79 Stat. 254, 257 (July 23).

H.R.J. Res. 192, 73d Cong. (1933) (enacted) (Sess. I, Ch. 48, June 5) (Public Res., No. 10) (48 Stat. 112, 113 (1933)) (formerly codified at 31 U.S.C. § 463) (codified as amended at 31 U.S.C. § 5118(d)(2)).

Statement of the Case

When Federal Questions Were Raised

Upon filing the suit in the county court.

The reason this mandamus and declaratory judgment proceeding even exists is because the present municipal court process violates Due Process and Separation of Powers. The state legislation challenged allows STATE to initiate criminal proceedings in *municipal* (and county) courts without **pleadings**. Question 4 was first raised on appeal. Florance served the suit and the appeal on USOA.

No such thing as a "complaint only" criminal case

In the *municipal* court, Florance entered a special appearance and moved (several times) to dismiss. When the municipal court refused to dismiss, Florance filed this suit in the *county* court, seeking (1) mandamus to compel the municipal court to dismiss and (2) declaratory judgment regarding the statutes that allow "complaint only" criminal cases.

STATE says, "No jurisdiction", to *both* actions

STATE says that Florance has an adequate remedy at law via appeal from the municipal court. *But*, the county court never even set the mandamus for a hearing. Then, the county court granted STATE's plea to the jurisdiction, dismissing *both* actions for lack of jurisdiction.

The crux—trial *de novo* with no pleading?

In *Collin* County, there are only municipal courts. *Cf. In re Collard* (regarding *Dallas* County municipal courts of (public) Record) (mandamus authority exists!). Appeal from the municipal courts is via trial *de novo* in the county court. STATE calls this an adequate remedy at law. But (A) other statutes, (B) Due Process, and (C) Separation of Powers specifically require STATE to file an authorized **pleading** in order to trigger a *county* (actually, *any*) court's jurisdiction. In short, the right to an appeal is both created and violated simultaneously.

Comparison to and contrast with *In re Collard*

Mandamus v. appeal.

In re Collard focuses on *mandamus* authority. No state court has mandamus authority over the Dallas County municipal courts of (public) Record.

Here, the focus is *appellate* authority. No state court has appellate authority over the Collin County municipal courts. That lack of appellate authority compels this suit.

Catch-22. O"Henry would appreciate the irony.

Let's say that the county court was right not even to set the mandamus for hearing. This confesses the crux of the matter: no appellate (trial *de novo*) jurisdiction!

This, in turn, confesses the county court's *full* jurisdiction over the declaratory judgment action. *See* TX CIV. PRAC. & REM. CODE ANN. § 37.003(a).

At the heart of the procedural problem—The McDade Act "in reverse" at the state level

The McDade Act, 28 U.S.C.A. § 530B, intended to *add restrictions* to the practice of law in the federal courts. One key problem is that the threshold "admissions" issue is a judicial decision, not a legislative one. Thus, the Separation of Powers doctrine limits the McDade Act.

What STATE's statutes, in particular Arts. 2.05 and 45.019, do, if the complaint *is* the **pleading**, is *completely remove all restrictions* on who may represent one particular artificial entity: STATE. A "complaint only" case is all the more alarming because it intends to initiate a criminal prosecution. Thus, STATE's legislature invades the province of STATE's judiciary and "admits" *all* to act as licensed, pro bono staff under an elected prosecutor for the limited purpose of filing the initial criminal **pleading**. Via these statutes, STATE moves forward on "criminal" matters with a material witness serving as unauthorized attorney of Record, or, quite often, with a non-witness, i.e., a municipal court deputy clerk, serving as unauthorized attorney of Record.

The primary statutory conflict

Pleading (authorized signature) required.

TX Const. art. 5, § 12; Arts. 2.04, 21.20, 21.21, 21.22, 27.01; TX R. CIV. P. 7. Due Process. Separation of Powers.

No pleading (authorized signature) required.

TX Const. art. 5, § 17 (county court), Arts. 2.05, 45.018, 45.019 (municipal court), 44.17, 44.181, 45.042, 45.201 (no elected prosecutor need sign *or* prosecute).

The Odyssey from the top: Returning the lost/found cell phone—No good deed goes unpunished

January, A.D. 2005. Florance (16 at the time) and her friend, Taylor W., found a third friend's cell phone and sought to return it to him. He happened to be at a party. Florance, a known non-drinker among her friends, poured herself a Coke, which turns out to have been spiked. When she figured out what was likely the cause of the unusual taste, she set it down and didn't touch it again.

As Florance and Taylor were leaving, having been there maybe 20 minutes, two cops arrived and ordered them back into the house. Some of the minors were allowed to leave; others were compelled to stay. *Miranda* warnings were never given. Those who were compelled to stay were given breathalyzer tests, which registered a .021 for Florance. Officer NORS with CITY OF PLANO issued a ticket, which Florance signed.

Motivation to defend abounds

Florance is punished for no wrong doing.

Florance did nothing wrong in the first place. The Coke she poured was already spiked. She stopped drinking it, put it down, and never touched it again.

Selective enforcement.

Then she witnessed selective and unequal enforcement. Some of the people were allowed to leave, whereas Florance and Taylor were compelled to stay.

Special appearance and motion to dismiss denied.

Florance and her father, RJF, responded to the summons and appeared on 1 March in the municipal

court. [1] Florance filed her special appearance and motion to dismiss, which was rather instantly denied.

Responsive plea required on 1 March, but the complaint wasn't even *filed* until 31 March.

Asserting lack of subject matter jurisdiction in the municipal court, due to no **pleading**, Florance refused to plea, so the court entered the plea of Not Guilty.

However, STATE must *serve* Florance with the complaint [2] at least one day before "any proceeding". Art. 45.018(b). Since the arraignment surely qualifies as "any proceeding", STATE had to *serve* Florance with the complaint on or before 28 February. But, NORS' complaint wasn't even *filed* until 31 March. Florance, 16, asked a ***great*** question: How *does* someone plea on 1 March to a complaint that isn't *filed* until 31 March?

Both cops openly committed perjury.

The other cop testified during the suppression hearing that Florance told NORS that Florance drank half a beer. Apparently, half a beer and 30 minutes or so produces a .021 reading on most breathalyzers (given a presumption of bodyweight, metabolism, etc.). Since Florance ***never even touched a beer***, it was clear what type lesson this 16-/17-year-old was going to learn from this experience.

NORS testified at trial that Florance said she had a "mixed drink". That phrase was first used, for descriptive purposes, in one of Florance's pre-trial Affidavits. Florance ***never told NORS any such thing***. Is there something about *this* case that motivates these two cops to ***perjure*** themselves, or is this just S.O.P. with CITY?

Mandamus in county court—not even set for hearing.

In about half a dozen different ways, Florance moved to dismiss and to strike; all were denied. So, Florance and RJF filed this mandamus and declaratory judgment

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[1] Case 1: STATE v. Florance (and RJF as Next Friend). No. 2005007697, Municipal Court, CITY OF PLANO, TX.

[2] *Complaint* is vague. Sometimes it means a verified statement of *fact and belief*, and other times it means a **pleading**.

action in the county court. [3] The county court Clerk, operating under rather dated Rules, first wanted a motion for leave to file. But, her point regarding format of the mandamus petition was well made (the county court *is* the appellate court for this proceeding), so a brief per the appellate Rules was made and filed. Waiting until the "eve of trial" in the municipal court, the county judge gave Notice that she wasn't even going to set the mandamus for hearing. That Notice didn't arrive until after Removal.

Removal from municipal court, and "Non-appearance"!

Since the *municipal* court's lack of jurisdiction is a perpetually renewing Due Process violation, there may or may not really be a 30-day time window in which to file the Notice of Removal. However, if there were such a window, the deadline for Removal, which Florance met, was 5 July. [4] The original trial setting was 6 July.

On 12 July, the municipal court not only reset the matter, *unilaterally*, but also took it off the trial docket, presumably per the automatic stay. On 18 July, CITY, as agent for STATE, filed its motion for Remand.

But, on 19 July, a clerk with the municipal court filed the second charge against Florance: Non-appearance. [5]

Defense to contempt motion—*ex parte* emails!

CITY defended against Florance's contempt motion by revealing the 22 July *ex parte* email communications between CITY and the municipal court, in which CITY requested, and the court granted, *ex parte*, off the Record, a continuance/stay pending ruling on the Removal. Still, the second charge was never dismissed, and was tried.

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[3] Case 2: Florance & RJF, Next Friend v. STATE. No. 001-1412-05, Collin County Court at Law No. 1. This case.

[4] Case 3: STATE v. Florance & RJF, Next Friend. No. 4:05-CV-264 (E.D. TX, Sherman).

[5] Case 4: STATE v. Florance. No. 2005056271. Municipal Court, CITY OF PLANO, TX (regarding 6 July). Testimony on trial *de novo*, *infra* n.10 (Case 5), proved that the clerk acted under the instructions of the municipal court judge in filing this second charge (again, no **pleading**). Thus, the stay was only partially respected.

Remand looks to universally false presumption.

The magistrate in the Eastern District, to which the Florances specifically ***never*** consented, [6] operated on the same universally false presumption extant in the Collard Removal matter: [7] if it's in a municipal court, then it's a "criminal" matter, period. [8]

Jury instructions—no mens rea element.

Florance offered evidence of complete lack of mens rea, but the municipal court gave no mens rea instruction, [9] effectively "finding" mens rea as a matter of law. So, in TX, a victim of Coke-spiking is a criminal: $250.

Jury instructions—nothing about Removal.

Florance offered evidence of Removal, but the court never gave any jury instruction regarding the automatic stay or the court's *and* CITY's acts in conformance with the stay. How *does* one "not appear" for a "non-setting"? Ironically, CITY charged Florance, but not also RJF. Thus, everyone but Florance got the benefit of the automatic stay: **$500**. More on this momentarily.

Appeal, i.e., trial *de novo*.

MOTIONS TO DISMISS AND TO STRIKE.

Florance filed the Bond and the Notice of Appeal, activating the trial *de novo*. [10] When Florance's motions to dismiss and to strike were denied, Florance Removed.[11]

REMOVAL—STILL NO REMAND TO THIS VERY DAY.

The *county* court gave Florance the courtesy of a call

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[6] Federal Appeal 1: STATE v. Florance & RJF. No. 05-41351 (5th Cir.). Denial of contempt is another reason for the appeal. Dismissed. Fee.

[7] STATE v. Collard, No. 3:06-CV-317-M (N.D. TX, Dallas).

[8] Municipal courts have "criminal case only" jurisdiction. TX GOV'T CODE ANN. § 29.003.

[9] *Cf.* PENAL CODE § 1.07(a)(22)(B) (mens rea), § 6.02(b) (statute must plainly dispense with mens rea), § 6.02(c) (mens rea), § 6.02(f) (mens rea, ***if*** **fine over $500** (§ 12.23)) (i.e., the crime is ***defined after trial***, at the punishment phase) *and* ALCO. BEV. CODE. § 1.08 (*negligence* mens rea), § 106.04 (doesn't plainly dispense with mens rea).

[10] Case 5: STATE v. Florance, Nos. 003-81451/81453-06.

[11] Case 6: STATE v. Florance, No. 4:06-CV-175 (E.D. TX, Sherman).

saying that the court dates would be enforced with arrest. Florance gave the court the courtesy of a written response consisting of several pages of explanation of what happens when courts without jurisdiction disobey automatic stays.

THE TRIAL *DE NOVO* WENT FORWARD ANYWAY.

After this exchange of courtesies, the county court proceeded with the two-day trial. The county court did allow quite a bit of discussion on the matter of Removal. However, the court wasn't going to allow the 22 July *ex parte* email exchange that recognizes the Removal, i.e., *confesses* the facial absurdity of that "Non-appearance" charge. That evening, Florance found a way to get that evidence entered the next day. [12] Florance's eyewitness, back from Arizona, appeared and testified as to what happened and when. He is now serving in the Navy.

JURY INSTRUCTIONS—NO MENS REA ELEMENT.

By not including Florance's proposed jury instructions, the county court didn't include any mens rea standard. Again, in TX, a victim of Coke-spiking is a criminal: $75.

JURY INSTRUCTIONS—NOTHING ABOUT REMOVAL.

Anticipating confusion, Florance's proposed jury instructions included the law regarding Removal and the automatic stay. The court didn't include any of Florance's proposed instructions. But, this advisory panel came back with questions specifically about the Removal, to which the court responded that they should rely upon the testimony they heard. They entered a "Not Guilty" verdict on the "Non-appearance" charge: **$0**

The irony here is that testimony on Removal included the fact that the very case being tried had been Removed and not Remanded. (No magistrate this time.)

MOTION FOR CONTEMPT.

The total fine of $75 is down from $750, but Florance repeatedly told the county court that he never had jurisdiction to try those cases, twice over: (A) no pleading,

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[12] The email was one of several Exhibits with CITY/STATE's response to Florance's Motion for Contempt in Case 3, the first Removal case.

and (B) no Remand. [13] The county court, just like the municipal court, flagrantly violated the automatic stay. So, per the Notice given in the exchange of courtesies, Florance filed her motion for contempt.

APPEAL OF "GUILTY" *AND* "NOT GUILTY" VERDICTS.

Florance has appealed both verdicts. To date, there is no Clerk's Record filed, but the Transcript has been submitted. There is no case number in the appellate court. Apparently, there is no final order *entered*, meaning the Notice of Appeal will activate upon entry of that order.

Transitioning back to the case of focus.

To make the observation in this immediate context, *this* trial *de novo* is the alleged "adequate remedy at law" the existence of which purportedly justified dismissal of the mandamus and declaratory judgment suit under review here. There is no **pleading** in the county court, because (A) it's **trial** *de novo*, not **suit** *de novo*, and (B) there was no **pleading** in the municipal court. Removal without Remand only bolsters the crux of this matter—there is no jurisdiction in the county court for any trial *de novo* where there is no **pleading**; hence, no adequate remedy at law. Dismissal violated Due Process.

The motion for new trial opened a whole new chapter.

To review briefly, the county court never even set the mandamus for a hearing; STATE filed a plea to the jurisdiction; the county court dismissed *both* actions.

Notice of appeal is properly filed within 30 days, unless there's a timely motion for new trial, which adds about 60 days to the appellate timetable. The Florances filed their motion for new trial timely, and that's when the criminal Record-tampering started.

County Clerk's criminal Record-tampering.

The first time the Collin County Clerk's Office didn't file the motion for new trial, it was returned for failure to include the filing fee. The second time, the deputy clerk

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[13] Only *criminal* cases may be tried during Removal. *See* § 1446(c)(3).

said that the motion was not in the envelope at all.

The state *appellate* Clerk's inquiry was fully expected. Upon review of RJF's Probable Cause Affidavit, the appellate Clerk confirmed the timeliness of the appeal, [14] but the appellate court affirmed the dismissal. It's that ruling under review here. [15] Motion to stay mandate: denied. Mandate issued 18 October.

(A) Criminal threats against RJF, (B) County Clerk's incompetent "motion", (C) libel, and (D) even *more* criminal Record-tampering, all "under advice of counsel"!

To complete the context surrounding this effort, still more litigation sprang up from this case.

THE CLERK'S FEE AND THE NOTICE OF LIEN.

For state appeals, there's a clerk's fee for Record preparation. The Florances have no intention of financing the criminal conduct committed against them by the county clerks. So, RJF discharged that amount ($129) by means unfamiliar to the Clerk (TAYLOR). TAYLOR demanded a different form of promise in discharge. So RJF submitted a *second* promise in discharge, along with his Notice of Lien, [16] given the automatic perfection of the "secret" lien securing the claim. [17]

DAVIS/TAYLOR'S CRIMINAL THREATS AGAINST RJF.

Through "County Attorney" DAVIS, [18] TAYLOR demanded that RJF release his "fraudulent lien", threatening RJF with criminal charges if he didn't. When RJF ignored that letter, DAVIS filed a "motion" (to

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[14] State Appeal 1: Florance & RJF, Next Friend v. STATE. No. 05-05-1425-CV. Court of Appeals of TX, Fifth District at Dallas. This case.

[15] In the face of the flagrant criminal Record-tampering, CITY filed an amicus brief arguing untimely appeal. After the Clerk's ruling of timeliness, STATE filed its brief, also arguing untimely appeal! The appellate panel recognized that argument to be "without merit".

[16] In full expectation and anticipation of inquiry by the state appellate court, RJF made very clear in the Record what had happened.

[17] At that stage of the matter, Florance was content to have the Clerk pay for the preparation of the criminally tampered-with Record: $129.

[18] There is no elected County Attorney for Collin County.

remove the "fraudulent lien") in Florance v. STATE (this case). [19] Indicative of the scholarship driving that effort, the "fraudulent lien" removal process, which process facially violates Due Process, is designed for *district* courts, not *county* courts. *See* GOV'T CODE § 51.903. [20] Florance v. STATE (this case) is not only a *county* court matter, but also was, at the time that "motion" was filed, a four- to five-months-ago *dismissed* county court matter, to which TAYLOR was *never* a party! Moreover, DAVIS filed that "motion" several weeks ***after*** TAYLOR had already delivered the Record to the state appellate court! Thus, Florance v. STATE (this case) wasn't even *pending* at the time TAYLOR, under advice of "County Attorney" DAVIS, filed that "motion" in this case.

DAVIS/TAYLOR'S FEIGNED/SIMULATED PROCESS.

In short, DAVIS' "motion" in the *county* court isn't a motion; it's either an original petition or a petition to intervene. TAYLOR paid no filing fee for her petition, obviously said nothing about its being a completely separate case, and, while using the Florance v. STATE style, asserted *nothing* about intervention. Additionally, in no imaginable way did TAYLOR or "County Attorney" DAVIS comply with Service of Citation rules.

REMOVAL, AND DAVIS' EGREGIOUS LIBEL.

RJF Removed ***TAYLOR v. RJF***. [21] DAVIS, acting on behalf of his client, his firm, Collin County and STATE, retaliated, viciously libeling RJF, calling him a "litigation terrorist" and a member of the "jihad". [22] There are not enough superlatives to describe it. *Vile* and *egregious* hardly scratch the surface.

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[19] Case 7: ***TAYLOR v. RJF***. Collin County Court at Law No. 1. No independent case number. TAYLOR's "motion" was filed under the style of and in the case jacket with Case 2 (this case).

[20] *See also* GOV'T CODE § 51.902.

[21] Case 8: ***TAYLOR v. RJF***. No. 3:06-CV-121-R (N.D. TX, Dallas). Venue is based on matters addressed in RJF's motion to realign.

[22] DAVIS fancies himself an expert in "federal income tax" law, too.

TAYLOR'S DIRECT CRIMINAL RECORD-TAMPERING, AND DAVIS' IMPROPER INFLUENCE OVER A PUBLIC OFFICIAL.

Recalling that DAVIS' is responding to a Notice of Lien for a $129 matter, arising from the Collin County Clerk's Offices original criminal Record-tampering regarding the motion for new trial in *this* case, we revisit the criminal Record-tampering theme. TAYLOR, under advice of "County Attorney" DAVIS, ***refused to file the Notice of Removal*** [23] in the county court Record. RJF filed his first verified motion for contempt, noting the wave of criminal Record-tampering in this matter. It's possible to jackhammer DAVIS' response enough to dig out DAVIS' recognition of the value in *filing* the Notice of Removal, which RJF resubmitted, and which TAYLOR eventually filed. ***Excellent*** lessons for teenagers! And, none of this changes the fact that Florance, who returned a lost cell phone, the modern teenager's life-line, sipped a spiked Coke, for which she's now a convicted criminal.

REMAND, WITH SANCTIONS! AND THE APPEAL.

BUCHMEYER Remanded and ordered RJF to pay $3,000+ in *attorney's fees* for Removing ***TAYLOR v. RJF***, because RJF was the ***plaintiff!*** [24] RJF appealed.[25]

MORE INDESCRIBABLY VICIOUS LIBEL.

In time, DAVIS filed a motion to dismiss that appeal, identifying the wrong case, and viciously libeling RJF, for the THIRD time, as a "litigation terrorist". The Fifth

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[23] For Case 8.

[24] Regarding BUCHMEYER's very confused orders, Case 2, to which TAYLOR was never a party, is styled Florance v. STATE. Case 2 was never Removed to anywhere. Case 7 is properly styled ***TAYLOR v. RJF.*** Case 7, as ***Removed***, i.e., Case 8, is properly styled ***TAYLOR v. RJF.*** But, the first case ***Remanded***, Florance v. TAYLOR, doesn't exist. The second case ***Remanded***, Florance v. STATE, Case 2, was never Removed. The third order in ***TAYLOR v. RJF*** is the one by which BUCHMEYER sanctioned RJF for being the ***plaintiff!*** DAVIS has demanded payment of those $3,000+ sanctions.

[25] Federal appeal 2: ***TAYLOR v. RJF***, No. 06-10327 (5th Cir.).

Circuit dismissed ***TAYLOR v. RJF***.[26]

Add (E) mail fraud, "under advice of counsel"!

To confirm what really was filed in Florance v. STATE subsequent to the state appeal, RJF sent by mail[27] a letter dated 6 February A.D. 2006 confirming a particular conversation about what was and was not being done "under the advice of the 'County Attorney' ", and requesting a certified copy of the clerk's docket sheet. The fee, $8, was included (via a money order). Having received no docket sheet, RJF included that fact in a second letter he mailed to TAYLOR's Office. RJF has *still* received no docket sheet; the money order has not been returned.

The 1 April criminal charge against RJF.

By Notice cleverly dated April Fool's Day, which was a Saturday this year, the investigator informed RJF he had been charged criminally for violating PENAL CODE § 32.49 (refusing to release fraudulent lien).[28] This is despite the fact that the commercial claim arises from criminal conduct under color of law, ***and*** that federal law, since at least 1883, *see Vance*, has required Notice of otherwise "secret" liens. The Collin County DA has not charged DAVIS, *or* TAYLOR, *or* even the deputy clerk who originally tampered with the motion for new trial. But, he has charged RJF criminally, for ***following*** the law.[29]

Secret and *ex parte*—the 401st district court.

For RJF's opponents, the law ceased being relevant a long time ago. It doesn't matter how many laws they have to break; they're going to prove to RJF who's boss. After

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[26] Given the learning from Federal Appeal 1, RJF informed the 5th Circuit, in response to DAVIS' motion, that since certain issues turned out to be non-justiciable political questions, the key point of that Removal and appeal, by that time, had been addressed. Key to note is that the appeal, even as dismissed, is styled ***TAYLOR v. RJF***.

[27] CMRRR 7005 2570 0001 1031 8806.

[28] Case 9: STATE v. RJF, No. 002-81238-06, County Court at Law No. 2 of Collin County.

[29] But, STATE hasn't answered discovery. How the county court has jurisdiction over an exclusively federal *in rem* matter is a key issue.

someone read the statute to DAVIS, he did file a "motion" per GOV'T CODE § 51.903 in the *district* court. [30] When RJF received the final order from that secret, *ex parte*, bill-of-pain-and-penalty proceeding, he appealed. [31]

Still *more* indescribably vicious libel.

Responding to RJF's brief, DAVIS filed a motion for sanctions, libeling RJF, ***for the FOURTH time***, as a "litigation terrorist". RJF waived Reply and filed a motion to strike. DAVIS' response?—***the FIFTH act of libel!!***

No, the litigation matters are not yet fully listed.

There is yet one more included here for its curious timing. Four years ago, A.D. 2002, STATE, via CITY OF RICHARDSON, cited RJF for some matters regarding parked trailers. [32] The municipal court of (public) Record judge is the same as in the Collard case. RJF filed a motion to dismiss that includes, on page one, the objection to STATE's failure to file any **pleading**. The assessed fines total $4,000. RJF appealed, ultimately to the Court of Criminal Appeals. Somewhere in there, a demand for payment was made prematurely, then withdrawn, and the matter has been dormant ever since, until very recently (12 October). CITY/STATE has now received a mandate and has made demand for payment.

The matter is presently in informal discovery regarding collateral challenge to the void "judgments".

One spiked Coke, 11 lawsuits, and 4 appeals later ...

There is *still* no such thing as a "complaint only" criminal case, in ***any*** court, municipal ***or*** county. Thus, there being no adequate remedy at law, dismissal of the declaratory judgment action violated both Due Process and Separation of Powers.

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[30] Case 10: *In re: A Purported Lien ...* (i.e., ***TAYLOR v. RJF***), Case No. 401-02217-06, 401st District Court, Collin County.

[31] State Appeal 2: RJF v. TAYLOR, No. 05-06-00992-CV, Fifth District at Dallas.

[32] Case 11: STATE v. RJF, Nos. MC-00-R0041-D (N5910) and MC-00-R0042-D (N5912), Municipal Court of Record, RICHARDSON, TX.

Argument

Remedies Requested

Declaratory Judgment.

REVERSE IN PART.

The state appellate panel are correct that CITY/ STATE's "untimely appeal" position is "without merit". However, they violated Due Process and Separation of Powers by affirming the dismissal. The county court *has* jurisdiction over the declaratory judgment action.

ADDRESS THE DECLARATORY JUDGMENT DIRECTLY, OR REMAND WITH INSTRUCTIONS EITHER TO THE APPELLATE COURT OR TO THE COUNTY COURT.

While best is simply remand to the county court, it won't matter which Court declares that the challenged statutes violate Due Process and Separation of Powers.

"The petition for writ of certiorari is granted. We agree with the appellate court that State of Texas' position, that the appeal is untimely, is without merit.

"Affirmed, in part. Reversed, in part. Remanded to the County Court at Law No. 1 of Collin County for further proceedings."

Regarding mandamus.

First, the Florances concur completely that the county court has no authority to enter the mandamus. This is not because Florance *has* an adequate remedy at law, [33] but, to the contrary, because the county court has no appellate (trial *de novo*) jurisdiction over any "complaint only" "criminal" non-case in any Collin County municipal court to protect. Secondly, there's been both the municipal court trial and the county court trial, ***both*** without jurisdiction. Therefore, as a practical matter, problem-*prevention* dismissal mandamus is rather moot. Further, the matter may be completely resolved via the declaratory judgment.

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[33] Florance distinguishes "sui generis" from "remedy at law".

Due Process—Equity v. Law

1. Does an appeal (an adequate remedy at law) really exist where there is no trial *de novo* jurisdiction?

No pleading *filed*?—no jurisdiction.

TX Const. art. 5, § 12; Arts. 2.04, 21.20, 21.21, 21.22, 27.01; *Rowland*, 506 U.S. at 201-03 (all artificial entities must have counsel—federal); TX R. CIV. P. 7 (corporations must have counsel—state); *Kuntoplast of Am., Inc.* (same); *Computize, Inc.* (same); *Moore* (same); *Dell Dev. Corp.* (same); *Globe Leasing, Inc.*, 437 S.W.2d at 45-46 (same); ABA MODEL RULES OF PROF'L CONDUCT R. 3.7 (material witness can't also be attorney of Record); TX DISCIPLINARY RS. PROF'L CONDUCT 3.08, 5.05 (same, plus facilitating unauthorized practice); *Garcetti v. Ceballos* (ethics still matter; "whistleblower" lawyer who testifies against client is fortunate still to have license, much less job); *TX Dept. of Parks & Wildlife v. Miranda* (standing, burden on plaintiff, requires "actual grievance"—state).

No pleading *served*?—no jurisdiction.

Murphy Bros., Inc.; *Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation.").

Where the court enters a plea, there is a proceeding. *Cf.* Art. 45.0215(a)(2). That proceeding occurred on 1 March A.D. 2005. But NORS' complaint wasn't even *filed* until 31 March. This makes it legally impossible for STATE to *serve* anything, not even the complaint, much less a still-non-existent **pleading**, at least one day prior to "any proceeding". Art. 45.018(b).

County court *inherits* municipal court Record defects.

To say that a municipal court has "no Record" is to speak non-sense, of course. If there were no Record in the municipal court, then where is even the "complaint only" paperwork on which the county court bases its trial *de novo* jurisdiction? What "order" or "judgment" does that

municipal court enforce? How does preservation of objections via Art. 44.181(a) make any sense without a Record? There may not be a verbatim transcript of the trial, itself, but there most certainly is a Record.

So, the Record exists. And, nothing about trial *de novo* "cleanses" that Record, altering facts that already exist.

To borrow a notion from quit-claim deeds, the municipal court cannot "transfer" more than it, itself, has. *Cf. TXO Prod. Corp.*, 509 U.S. at 447-50 and n.8; *Knight*, 142 U.S. at 187-88 (citing *Beard*, 70 U.S. at 491). So, nothing about "transfer" of the matter for trial changes the already existing pre-trial facts. Thus, obviously, where there is no **pleading** in the municipal court, there is also, and simultaneously, no **pleading** in the county court.

For STATE to proceed not with just one trial, but with ***two***, without any **pleading** *filed*, much less *served*, where even the complaint is not *served* according to their very own rules, is for STATE to compound its defiance of both Due Process and Separation of Powers.

The crux—where's the alleged appeal (trial *de novo*)?

STATE says Florance can't pursue declaratory judgment in a separate proceeding in the county court, i.e., that the county court has no jurisdiction over such action, because Florance has an adequate remedy at law, namely the appeal (trial *de novo*). In other words, the state courts may reach the merits of Florance's statutory challenges via appeal, which starts with the trial *do novo*.

Ok, fine. Where is it? Where *is* that alleged trial *de novo*? It's sitting very quietly in the *federal* court. Why? Ultimately, because STATE's "complaint only" non-cases are civil matters that raise completely preemptive federal questions. In short, there is at least one federal trial lawyer/jurist who understands that there simply is no such thing as a "complaint only" criminal case. The "complaint only" concept violates Due Process and Separation of Powers. So, again, where is it? Where's the alleged trial *de novo*?

No access; no opportunity to be heard.

The dismissal of the Florances' declaratory judgment action violates Due Process (access, meaningful opportunity to be heard) and Separation of Powers. *See, e.g., Boddie* (denial of access to the court); *Milliken* (Notice, opportunity to be heard, fair play, substantial justice); *International Shoe* (Notice, opportunity to be heard); *Mullane* (Notice, opportunity to be heard); *Armstrong*, 380 U.S. at 552 (Notice, meaningful time, meaningful manner); *Sniadach* (Notice, opportunity to be heard); *Fuentes v. Shevin* (Notice, meaningful time); *N. Ga. Finishing* (Notice, opportunity to be heard, even for corporations (i.e., the shareholders)); *Burns* (Notice, opportunity to be heard, on upward departure); *Hamdi* (denial of access and of opportunity to be heard); *Jones* (Notice, opportunity to be heard).

There is no remedy at law.

Quite to the contrary of STATE's position, no state court has appellate jurisdiction over the Collin County municipal courts' "complaint only" (no **pleading**, no authorized signature) non-cases. The county court fully confessed this fact by not even setting the Florances' mandamus action for hearing. Thus, no defendant in the municipal courts has any adequate remedy at law. The very confused legislation creates a right of appeal for those defendants, but then, simultaneously, violates it.

Given that there is no **pleading** even *filed*, much less *served*, in the municipal courts, no county court has jurisdiction over any trial *de novo*. Therefore, there is no way under the heavens to reach the merits of the statutory challenges without a separate declaratory judgment action.

STATUTORY CHALLENGES

Due Process, Separation of Powers

2. Does Art. 45.018 violate Due Process or Separation of Powers?

Applications of the authority in Question 1.

Question 1 supplies the authority for all of these statutory challenges, which discuss specific statutes.

Due Process violation—no Notice.

STATE's long-time habit is not to serve any complaint the day before any proceeding.

Presume no statutory problem. Art. 45.018(b) requires service of the complaint at least one day before "any proceeding". Per Art. 45.0215(a)(2), an "arraignment" is a proceeding. So, by not even filing what *STATE* calls the complaint until 30 days after the so-called arraignment, which renders a competent, responsive "plea" legally, and humanly, impossible to enter, both for the respondent ***and*** for the court, STATE violated its own laws. This particular violation left the municipal *and* the county court without jurisdiction, for lack of Notice.

Due Process violation—no Notice required.

Independent from the facts, the statute is void.

ART. 45.018(a)—*COMPLAINT*: A WITNESS' STATEMENT.

Art. 45.018(a) identifies *complaint* for what it is, a witness' statement. A *complaint* is not a **pleading**. Where *complaint* is read, simultaneously, also to mean **pleading**, it's instantly vague, thereby violating the principle of legality. *Cf. Bouie*, 378 U.S. at 351 (quoting *Harriss*, 347 U.S. at 617); *Lanier*, 520 U.S. at 265 and n.5; *City of Chicago*, 527 U.S. at 55-56.

ART. 45.018(b)—NO PLEADING TO BE FILED OR SERVED.

No matter how we read this one, no **pleading** need be filed *or* served. Per the literal read, all that has to be *filed* is a witness' statement, and all that has to be *served* is

Notice that the witness' statement exists. But, even if we read this a bit closer to Due Process standards, i.e., even if the complaint to be filed is also what has to be served, we're still not talking about a **pleading**.

In short, this provision flat out abolishes Notice. [34]

Separation of Powers violation.

By allowing STATE to initiate any litigation at all, much less "criminal" litigation, without a **pleading**, thus, without an authorized signature, the legislature invades the province of the judicial power on the matter of "who may represent whom".

3. Do Arts. 2.05 and 45.019 violate Due Process or Separation of Powers?

Due Process violations—no Notice required.

Arts. 2.05 and 45.019 allow STATE to initiate criminal proceedings without either filing or serving a **pleading**. Where there is no **pleading** *filed*, there can't be any **pleading** *served*. Where there is no **pleading** *served*, there is no Notice. *See* Question 1, generally, and *Murphy Bros., Inc.* and *Lloyd*, in particular.

Separation of Powers violation.

Arts. 2.05 and 45.019 allow STATE to initiate criminal proceedings without authorized counsel. Thus, the legislature invades the province of the judicial power on the matter of "who may represent whom".

The legislature also rewrite the ethics code. Where a *complaint* is an adequate **pleading**, then Arts. 2.05 and 45.019 allow the witness to animate the forbidden second role of (unlicensed) counsel of Record in the same case. Moreover, Arts. 2.05 and 45.019 actually encourage all involved, including the jurists, both municipal and county, and the DA's to facilitate unauthorized practice.

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[34] Couple that with these post-trial-***defined*** "offenses", and we have a variant of the current "military commissions" theory applied to non-combat matters in every municipality that implements these policies.

4. Do Arts. 44.17, 44.181 and 45.042 violate Due Process or Separation of Powers?

Backdoor support for the non-case problem.

Arts. 44.17, 44.181 and 45.042 set trial *de novo* as the appeal from the municipal courts.

To justify an ***appeal***, via another trial, for a non-case that can never be ***tried*** in the first place is twisted. Where the *county* court cannot entertain the non-case from the outset, for there is no lawful **pleading** from the outset, the problems are compounded, not resolved.

Trial *de novo* doesn't reduce the process that is due.

Per Art. 27.01, the initial pleading for a misdemeanor case is an Information, which is the **pleading** that triggers *county* court jurisdiction.

An Information is signed by the DA (or County Attorney, not relevant here). Arts. 21.20, 21.21. To the DA, a complaint and a **pleading** are two entirely different things. Thus, per Art. 21.22, the DA looks to have ***two*** documents to file to start the case, not one.

These statutes violate Due Process.

Arts. 44.17, 44.181 and 45.042 allow, through the back door, a county court to proceed without jurisdiction. They try to mask the absence of the **pleading**. That mask is here removed, and these statutes violate Due Process.

They also violate Separation of Powers.

That which allows STATE to proceed, at all, much less in a "criminal" matter, without authorized signature ends up invading the judicial power in the regulation of the threshold "admissions" question.

Further, where the statutes allow a witness also to be the attorney of Record at the same time in the same case, and where that witness is not even licensed, much less elected or hired into the DA's office, the legislature invades the judicial power in the regulation of the profession, generally.

Synopsis

No adequate remedy at law.

A *complaint* documents ***evidence***. An Information is the **pleading**. *Complaints* are signed by witnesses; Informations, by District Attorneys. This is especially the case in county court. Thus, where STATE's legislation creates and violates, simultaneously, the right to appeal from a municipal court, the sole way to challenge those confused statutes is via separate declaratory judgment action. This is exactly what Florance and RJF did.

To confirm jurisdiction in the county court for the declaratory judgment action is to resolve the key issue.

Dismissal for lack of jurisdiction—Direct Conflict with Federal Standards.

What process is due? TX statutes specifically grant to state courts of Record the authority to hear declaratory judgment actions. So, where a state court with jurisdiction denies access, that state court violates Due Process. Moreover, where that state court denies access under the theory that some other remedy exists, which other remedy is legally impossible and doesn't exist, the state court also denies that petitioner a meaningful opportunity to be heard.

The appellate court's Affirmance of the dismissal conflicts directly with the law of this state, the rulings of this Court, and Due Process, generally. Thus, the court of appeals have (1) entered an opinion that conflicts with relevant decisions of this Court and with the law of the United States, and (2) so far departed from the accepted and usual course of judicial proceedings, and have encouraged the same departure by the lower court as to call for the exercise of this Court's supervisory power.

Statutory Challenges—Important Questions of Federal Law.

Whether any STATE's statutes may allow that STATE to initiate criminal proceedings without authorized

signature is an important question of federal law sounding in Due Process and Separation of Powers that has not been, but should be, decided by this Court.

Whether any STATE's statutes may create and, simultaneously, violate a right of appeal is an important question of federal law sounding in Due Process and Separation of Powers that has not been, but should be, decided by this Court.

Remedies Requested

Petitioners request

1. That this Court grant this petition, issue the writ of certiorari and take jurisdiction of this matter;
2. That this Court reverse appellate court's order, in part, and remand either to the appellate court or to the county court for further proceedings;
3. The opportunity to brief any additional issues the Court may identify;
4. The non-argument calendar. Oral argument is not expected to aid in the resolution of these issues;
5. That costs be taxed to STATE; and
6. Any and all other relief at law, in equity or sui generis to which they may show themselves justly entitled.

Respectfully submitted,

Amanda Jean Florance
Without prejudice

Richard John Florance, Jr.
Without prejudice

Appendix A

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Rule 14.1(i)(i)—Appellate Opinion and Judgment

2006 June 13—Memorandum Opinion

AFFIRM and Opinion Filed June 13, 2006

(SEAL for THE STATE OF TEXAS)

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-05-01435-CV

In the matter of A.F., a Minor

On Appeal from the County Court at Law No. 1
Collin County, Texas
Trial Court Cause No. 001-1412-05

MEMORANDUM OPINION

Before Justices O'Neill, Morris, and Mazzant
Opinion By Justice O'Neill

Appellants A.F, [1] a minor, and her father as next friend, appeal from the county court's order granting the State of Texas' plea to the jurisdiction and dismissing appellants' claims with prejudice for lack of subject matter jurisdiction. In several points, appellants argue that the county court erred in denying their mandamus and request for declaratory relief. The State responds that we do not have jurisdiction because appellants' notice

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[1] [N.B.: "A.F.," was likely intended.]

of appeal was untimely. Alternatively, the State contends A.F. could not seek relief in the county court before she was tried on her criminal case pending in municipal court. For the following reasons, we affirm the trial court's judgment.

Factual and Procedural Background

On January 22, 2005, A..F., a minor, was issued a citation for violating Texas Alcoholic Beverage Code section 106.04 (consumption of alcohol by a minor). Because the citation was [12] issued within Plano city limits and is a Class C misdemeanor, jurisdiction was proper in the Plano Municipal Court.

Before A.F.'s trial on the alleged violation, appellants filed a "Verified Original Petition for Writ of Mandamus to the Municipal Court, City of Plano, Texas, and For Declaratory Relief" with the county court arguing that the municipal court had no subject matter jurisdiction to hear the case. The State filed a response and a plea to the jurisdiction, arguing that the county court had no jurisdiction while the underlying offense was still pending in municipal court and that appellants had an adequate remedy on appeal. The county court granted the State's plea to the jurisdiction and dismissed with prejudice appellants' claims.

In their appeal, appellants largely ignore the issue of whether mandamus or declaratory relief was appropriate, instead focusing on the jurisdiction of the municipal court in the underlying criminal case and the unconstitutionality of portions of the Texas Code of Criminal Procedure. Because we conclude appellants' complaints must wait for a trial in municipal court, we affirm.

Timeliness of Motion for New Trial

We will begin by addressing the State's argument that we do not have jurisdiction over this appeal. The trial court signed its judgment on June 26, 2005. Appellants' October 25, 2005 notice of appeal is timely only if they filed a timely motion for new trial. Their motion for new trial was file-stamped on September 1, 2005. Because the deadline for filing a motion for new trial was August 25, 2005 and September 1, 2005 was beyond the thirty-day deadline required under Texas Rule of Civil Procedure 329b(a), we requested appellants provide an affidavit explaining the late filing of the motion. Upon affidavit, appellants explained that they originally mailed the motion for new trial on August 19, 2005; however, the court clerk returned it for failing to include the required filing fee. Appellants then resubmitted it on September 1, 2005, which is the date the clerk file- [⊥3] stamped it.

The Supreme Court of Texas has explicitly held that "the date of filing is when the document is first tendered to the clerk ... [t]hat date controls for appellate purposes." *Jamar v. Patterson*, 868 S.W.2d 318, 319 (Tex. 1993); *see also In re C.A.S.*, 128 S.W.3d 681, 686 (Tex. App.—Dallas 2003, no pet.) (relying on court's holding in *Jamar*). The court further noted that despite the lack of a filing fee, a motion is conditionally filed when tendered to the clerk and filing is complete when the filing fee is paid. *Jamar*, 868 S.W.2d at 319.

Thus, appellants' motion for new trial was conditionally filed on August 19, 2005, which was timely under Texas Rule of Civil Procedure 329b(a) and properly extended the deadline for filing a notice of appeal. The filing was complete on September 1, 2005 when they paid the filing fee. As such, the State's argument is without merit, and we have jurisdiction to consider this appeal.

Mandamus from Municipal Court to County Court at Law

After receiving a citation for consumption of alcohol by a minor but prior to any adjudication in municipal court, appellants filed a "Verified Original Petition for Writ of Mandamus to the Municipal Court, City of Plano, Texas, and For Declaratory Relief."

In *Grimm v. Garner*, the Supreme Court of Texas determined that a right to appeal from the justice court to the county court at law by trial de novo provided a defendant with an adequate remedy at law; therefore, the district court improperly issued a writ of mandamus to the justice court. *Grimm v. Garner*, 589 S.W.2d 955, 956-57 (Tex. 1979). "Since the appeal to the county court would be by trial de novo, [defendant] would have the right to reurge his same motion ... ." *Id.* at 957.

In this case, appellants filed their mandamus requesting the county court overrule the municipal court's failure to dismiss the underlying complaint. However, because appellant's [⊥3] underlying trial was still pending in municipal court, she still had an adequate remedy at law. Once the municipal court determined guilt or innocence, appellant could then appeal to the county court and reargue the validity of the underlying complaint, which would be reviewed de novo. *Id.* Thus, appellants have an adequate remedy at law, and mandamus relief is improper.

Request for Declaratory Relief

In addition to a petition for writ of mandamus, appellants also requested a declaration from the county court that several articles of the Texas Code of Criminal

Procedure are unconstitutional and violate due process.[2]

Pretrial orders on the constitutionality of a criminal statute, whether substantive or procedural, are interlocutory and may not be appealed until a final judgment is rendered. *Franklin v. Kyle*, 899 S.W.2d 405, 409 (Tex. App.—Waco 1995, no pet.). Likewise, a defendant may not seek declaratory relief regarding the constitutionality of the enforcement of criminal laws. *Id.* (holding that a court, through a declaratory action, could not construe the Board of Pardons and Paroles rules involving the right to a competency hearing prior to incarceration because a criminal defendant had no similar mechanism for challenging the constitutionality of criminal laws through declaratory judgment). A criminal defendant may argue to the trial court before her trial date that she believes the procedural devices enacted by the state legislature violate her state and/or federal rights; however, if the court disagrees, she must wait until she is convicted before appealing the constitutionality of the ruling. *Id.* At the time appellants filed their request for declaratory relief, A.F.'s misdemeanor violation was still pending before the municipal court; therefore, she was not entitled to declaratory relief. *Id.*

Further, the Supreme Court of Texas has held "... courts of equity will not interfere with the ordinary enforcement of a criminal statute unless the statute is unconstitutional and its enforcement will result in irreparable injury to vested property rights." *State of Texas v. Morales*, 869 S.W.2d 941, 945 (Tex. 1994). In *Better Home Products of Texas, Co. v. City of Dallas*, plaintiff sought a declaration from the trial court that a penal ordinance was unconstitutional. *Better Home*

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[2] [n.1 in the original.] The specific articles challenged are Texas Code of Criminal Procedure Articles 45.018 (complaint), 45.019 (requisites of complaint), and 45.201 (municipal prosecutions).

Products of Texas, Co. v. City of Dallas, 517 S.W.2d 373, 374 (Tex. App.—Dallas 1974, writ ref'd n.r.e.). This Court noted that although the suit was a statutory proceeding for declaratory relief rather than an equitable proceeding for injunctive relief, the purpose of the suit was to avoid prosecution under a criminal ordinance; therefore, the considerations that lead courts of equity to deny injunctive relief against enforcement of criminal laws apply with equal force. *Id.*; *see also City of Dallas v. Dallas County Housemovers Ass'n*, 555 S.W.2d 212, 213 (Tex App.—Dallas 1977, no writ) (noting that although civil courts are generally not concerned with the enforcement of criminal laws, civil courts may enjoin enforcement of a penal ordinance where it is void, and its enforcement will result in irreparable harm). We further held that a substantial controversy, such as a threat of irreparable injury, must be shown before a court will grant declaratory relief to avoid criminal prosecution. *Better Home Products of Texas, Co.*, 517 S.W.2d at 374.

Here, appellants have not claimed that enforcement of the statutes will result in any irreparable injury. Therefore, declaratory relief was improper. *Id.*

Conclusion

We affirm the trial court's judgment.

/s/ Michael J. O'Neill
MICHAEL J. O'NEILL
JUSTICE

051435F.P05

2006 June 13—Judgment

(SEAL for THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

AMANDA FLORANCE, A MINOR, and RICHARD JOHN FLORANCE, JR., NEXT FRIEND, Appellants	Appeal from the County Court at Law No. 1 of Collin County, Texas (Tr.Ct.No. 001-1412-05).
NO. 05-05-01435-CV V.	Opinion delivered by Justice O'Neill, Justices Morris and Mazzant participating.
STATE OF TEXAS, Appellee	

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**. It is **ORDERED** that appellee State of Texas recover its costs of this appeal from appellants Amanda Florance, a minor and Richard John Florance, Jr., next friend.

Judgment entered June 13, 2006.

/s/ Michael J. O'Neill
MICHAEL J. O'NEILL
JUSTICE

Rule 14.1(i)(ii)—Additional Orders

2005 July 5—County Court, Mandamus not even set for hearing

(COLLIN COUNTY Emblem)

COUNTY COURT AT LAW NO. 1
FOR
Collin County, Texas

CORRINE MASON
JUDGE PRESIDING

July 5, 2005

Richard John Florance, Jr.
1908 Vassar Drive
Richardson, Tx 75081

RE: Amanda Florance, a minor and Richard John Florance, Jr., Next Friend, Plaintiffs, v State of Texas, a federal corporation

Dear Mr. Florance:

Judge Mason has reviewed the Plaintiff's Verified Original Petition for Writ of Mandamus to the Municipal Court, City of Piano, Texas, and for Declaratory Relief. In this situation, mandamus is not proper, [3] therefore this matter will not be set for hearing.

Sincerely,

J'Net Chambers
Court Administrator

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[3] [N.B.: ";" may have been intended.]

/Jc

pc: court's file

1800 N. Graves Street, McKinney, Texas 75069
Phone: 972.548.3860 Fax: 972.548.3868
email: jchambers@co.collin.tx.us

2005 July 26—County Court, Dismissal

Cause No. 001-1412-05

AMANDA FLORANCE,	§	IN THE COUNTY COURT
minor,	§	AT LAW
and	§	
RICHARD JOHN	§	
FLORANCE, JR.,	§	
next friend,	§	
Plaintiffs,	§	NO. 1
v.	§	
STATE OF TEXAS,	§	COLLIN COUNTY,
Defendant.	§	TEXAS

ORDER GRANTING STATE OF TEXAS' PLEA TO THE JURISDICTION

Came on for consideration, Defendant State of Texas' Plea to the Jurisdiction. The Court is of the opinion that the plea is meritorious and should be granted. It is therefore,

ORDERED that Defendant State of Texas' Plea to the Jurisdiction is GRANTED and all of Plaintiff's claims in this lawsuit against Defendant State of Texas are DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction.

SIGNED this *26* day of *July*, 2005.

/s/ Corrine A. Mason
~~DISTRICT~~ JUDGE PRESIDING
COUNTY

Rule 14.1(i)(iii)—Rehearing

Other than Petition for Review (Writ of Error), no rehearing sought or granted.

Rule 14.1(i)(iv)—Judgment of different date

No judgment of date different from the opinion.

Rule 14.1(i)(v)—Statutes and Rules

See language included in the petition.

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record will be adequate.